



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**CHUKA ELC CASE NO 32 OF 2017**  
**FORMRLY MERU ELC CASE NO.49 OF 2014**

**ALBERT M'MBOGO.....PLAINTIFF**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA.....1<sup>ST</sup> DEFENDANT**

**R.M. NGUTU T/A NGURU AUCTIONEER.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Parties were issued with a notice to come to court on 21.2.2017 to show cause why this suit should not be dismissed for want of prosecution in terms of Order 17 Rule 2(1) of the Civil Procedure Rules.
2. M/S Rimita addressed the court on behalf of the Plaintiff.
4. Mr. Kaimba represented the two defendants.
4. M/S Rimita told the court that the parties had complied with Order 11 of the Civil Procedure Rules. She told the court that the plaintiff's demise in December, 2015 had caused delay in prosecution of the case in view of the fact that the plaintiff had a large family and it needed to agree on who should represent him in the suit. She told the court that the family had agreed on a representation and had on 25.10.2016 filed Succession Cause No. 8 of 2016 at CM's Court, Chuka.
5. Mr. Kaimba told the court that upon being informed by the plaintiff's advocates that he had died, they wrote to the advocates on 17.12.2015 seeking some document to confirm that the plaintiff had died so that they could inform the 1<sup>st</sup> defendant, their client. He told the court that they got no reply.
6. Mr. Kaimba continued to tell the court that they wrote another letter on 29.1.2016. They received a letter dated 2.2.2016 which informed them that the plaintiff's advocates had confirmed with a neighbour of the plaintiff that he had died. Mr. Kaimba told the court that they received no other communication from the plaintiff's advocates until they received the notice to show cause why this suit should not be dismissed for want of prosecution.
7. Mr Kaimba urged the court to dismiss this suit as one year had elapsed since any step had been taken to prosecute the case. Mr Kaimba also told the court that the suit had abated.
8. I agree with the defendant's advocate that this suit has abated.

9. I find that the parties have not shown to the satisfaction of this court why this suit should NOT be dismissed.

10. This suit is dismissed.

11. Costs are awarded to the defendants.

12. It is so ordered.

**Delivered in open court at Chuka this 13<sup>th</sup> day of March, 2017 in the presence of:**

CA: Ndegwa

Miss Mbaikiata for the plaintiff

Defendant or Advocate Absent

**P. M. NJOROGE**

**JUDGE**